IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 3592 of 1994

NOORE KHAN
V/S
STATE & ORS

Mr. SKM VYAS, for the appellant / petitioner

Mrs. RR KANWAR, A.G.A., for the respondent

Date of Order : 6.2.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

This writ petition has been filed, seeking to challenge the order of the Board of Revenue dt. 25.9.1987.

The facts are, that the petitioner filed a suit in the Court of Assistant Collector, Pokaran for declaration of Khatedari rights under Section 88 of the Rajasthan Tenancy Act, being Suit No. 281/79. That was decreed vide judgment dt. 8.9.1990, and the petitioner was declared Khatedar of Khasra No. 139 measuring 100 bighas in village Jaimla. Thereafter a reference was made by the Collector, Jaisalmer, under Section 232 of the Rajasthan Tenancy Act, for setting aside this decree, and the learned Board of Revenue, by the impugned order, held that the Assistant Collector has decreed the suit on the basis of oral evidence led by the plaintiff, which was found to be

obviously perverse, as the land being Siwai Chak, if the plaintiff had been in possession, there would definitely have been recorded evidence of such possession, and no such evidence has been led, and therefore, the judgment has been set aside.

Assailing the impugned order the learned counsel placed reliance on a Division Bench judgment of this Court in Saukhan Vs. State of Rajasthan, reported in 1990(2) RLW-543, wherein it has been held, that evidence consists of two types i.e. oral as well as documentary evidence, and both type of evidence are provided in Chapter IV and V of the Evidence Act, and therefore it is wrong to say that the matter cannot be decided on the basis of the oral evidence. It has further been held, that it is a different matter that the oral evidence led by petitioner may not be accepted by the trial court for good reasons, but then, merely on account of absence of documentary evidence, it cannot be discarded as a rule.

In my view this judgment supports the learned counsel for the petitioner on all fours.

In view of the above, the writ petition is allowed, and the order of the Board of Revenue, being Annexure-4 is set aside. Since it appears from the judgment of the learned trial court, being Annexure-1, that the

petitioner had led oral evidence to prove his case, and the defendant had also examined the Patwari, and this is nobody's case, that either of the parties did not have adequate opportunity to lead evidence; In that view of the matter, I think it appropriate to remand the matter to the Board of Revenue itself, to decide the reference, over again, on merits, keeping in view the principles propounded by the Division Bench of this Court in Saukhan's case.

The parties are directed to appear before the learned Board of Revenue on 12.3.2007. The learned Board of Revenue shall thereafter hear the parties again, and decide the reference afresh in accordance with law.

(N P GUPTA),J.

/Sushil/